IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

WP(C).No. 29863 of 2007(E)

PETITIONER:

V.RAJAN,AGED 57 YEARS,S/O. NARAYANAN
CHEMPAKASSERIL HOUSE, ERUVA WEST, PATHIYOOR P.O.
ALAPPUZHA.

BY ADV. SRI.G.PRIYADARSAN THAMPI
SRI.V.GOPIKRISHNA

RESPONDENTS:

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1. STATE OF KERALA
REPRESENTED BY SECRETARY,HOME DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DEPUTY SUPERINTENDENT OF POLICE
ALAPPUZHA.

3. THE SUB INSPECTOR OF POLICE
KAYAMKULAM POLICE STATION,
ALAPPUZHA DISTRICT.

4. THE ADDL. SUB INSPECTOR OF POLICE
KAYAMKULAM POLICE STATION,
ALAPPUZHA DISTRICT.

5. BABU,S/O. KRISHNAN
MANNANCHERRY HOUSE,
CHANDIROOR VILLAGE, ERUVA WEST,
ALAPPUZHA.

BY GOVERNMENT PLEADER SRI.M.S.BREEZ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J.

W.P.C.No.29863 of 2007

Dated this the 2nd day of November 2007

J U D G M E N T

The petitioner is the injured/de facto complainant in a prosecution under Section 307 I.P.C. He was arrayed as CW2. The F.I.statement was lodged by his son, CW1. Allegations were raised against seven accused persons, who were arrayed as accused 1 to 7 in the F.I.R. The alleged incident took place on 14/2/2005. The police conducted investigation and filed a final report. In the final report, the police made allegations only against accused 2 to 7. The first accused was deleted from the array of accused. The petitioner was unaware of this. No notice, as required as per the dictum in Bhagwant Singh vs. Commissioner of Police [1985 SC 1285] was ever given to the informant or to the petitioner. They were blissfully ignorant of the final report submitted by the investigating officer dropping the first accused from the array. The learned Magistrate took cognizance and later passed an order of committal under Section 209 Cr.P.C committing the original accused 2 to 7 (as per the F.I.R) to the court of Session. On the said order of committal, the learned Sessions Judge has taken cognizance against the six accused persons and has registered the case as S.C.No.416/06.

2. The petitioner has belatedly come to know that the first petitioner has been dropped from the array of accused. If the petitioner had known about it earlier, he would have appeared before the learned Magistrate and raised objection against the final report submitted by the police. According to the petitioner, the final report shows that no proper investigation has been conducted and the original first accused had unjustifiably been dropped from the array of accused. The petitioner as well as all the others have raised allegations against the first accused even as per the case diary statements now relied on; but unfortunately towards the end of the investigation, false and incorrect statement of the petitioner is shown to have been recorded which is made use of for dropping the original first accused from the array of accused.

3. After discussions at the Bar, the learned counsel for the petitioner submits that the petitioner shall be satisfied, if the petitioner is given opportunity to file a private complaint raising his grievance that the original first accused must also be proceeded against. In the meantime, the trial in S.C.No.416/06 may not be permitted to proceed.

4. I have heard the learned counsel for the petitioner. The report of the learned Magistrate was called for. I have perused the same also. I find the grievance of the petitioner to be reasonable and legitimate. But I am satisfied that the entire process need not be reversed now. The petitioner can be given reasonable time to approach the learned Magistrate with his grievance against the original first accused. There shall be a direction that in the meantime, that is for a period of one month from this date that the Sessions court shall not proceed with the trial in S.C.No.416/06. It is submitted at the Bar that the said case has not been listed for trial so far. If the petitioner files such a protest complaint, the learned Magistrate shall take expeditious steps to pass appropriate orders in such complaint. If such complaint is filed within one month, the petitioner can apprise the learned Sessions Judge of the fact and thereupon the learned Sessions Judge shall take appropriate steps in accordance with law.

5. This petition is allowed in part to the above extent.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007